High court throws out W. Richland irrigation lawsuit

By the Herald staff

Washington's Supreme Court has sided with the Columbia Irrigation District in a lawsuit filed by some homeowners in a West Richland neighborhood who contended the process used to annex them into the district was unconstitutional.

In a decision filed Thursday, justices affirmed an October 2007 decision by Benton County Superior Court Judge Vic VanderSchoor dismissing a lawsuit filed by 34 homeowners against CID.

The homeowners alleged in part that the irrigation district didn't have the required number of property owners sign up for the annexation, and that their rights to due process were violated.

Attorneys for the plantiffs and CID did not immediately return calls Thursday, but Janet Carlisle, one of the lead plaintiffs, said she was disappointed in the ruling.

"We were most hopeful that the Supreme Court would uphold our property rights," Carlisle said.

Carlisle said she appreciated all those who joined in the case and their attorney, John Ziobro, and said the case is over and they would not appeal. "This is as far as we wanted to go," she said.

VanderSchoor's dismissal of the lawsuit had validated the annexation and creation of the Belmont local improvement district, which was formed to bring irrigation water from the district's canal near Flat Top Park to at least 800 residential lots between Paradise Way, Belmont Boulevard, South Highlands Boulevard and Keene Road.

One of the main complaints by homeowners who opposed formation of the district was a state law that allowed CID to consider nonvotes as implied consents when it came time for property owners to approve the LID. Owners of 601 of the 800 lots included in the LID didn't vote at a public meeting in May 2007.

Of the 199 property owners who did vote, 148 said no to the LID, and 51 were in favor. The CID board of directors delayed its decision on the LID to allow more people to object.

When the board met in June 2007, owners of another 174 lots had sent written objections to the district. But that still didn't show a majority of the property owners against the proposal, so the board voted unanimously to connect the Belmont lots to the district's irrigation system.

In the Washington Supreme Court ruling, the justices wrote that the implied consent provision in state regulations "simply requires that the irrigation district board hold a public hearing after giving adequate notice to allow affected landowners to weigh in with their comments. There is no mention of an election."

Justices also wrote that due process "does not entitle a property owner to notice and a hearing leading up to the assessment."

In conclusion, the justices wrote that CID followed state statutes in its decision to annex.

"The plantiffs were entitled to notice only at some point in time before CID levies an assessment, not necessarily at the earlier stage when their lands were added to CID," justices wrote. "At that earlier

stage, CID only had to follow the statutes governing the add lands process, which CID did. Although some petitions may have been faulty, enough of them were valid."

Property owners in the Belmont LID were assessed $5,000 per acre for construction. The cost was adjusted based on the size of a lot, so, for example, an owner with a quarter acre paid one-fourth of that amount, said Keith Martin, CID district manager.

Some property owners paid off the amount, while others opted to have it amortized over a 10-year period and pay yearly, Martin said. Each property owner also must pay annually for cost of operations, a fee that was $250 last year, he said. The Belmont system serves about 460 acres, he said.

Martin said some of the plaintiffs haven't hooked up their irrigation systems to the CID's water supply line even though they are paying for it. "I've tried to do my best to explain to them that it's part of the deal, so they might as well hook up. But it's their decision," Martin said.